

R E M A R K S

The official action of 19 June 2009 has been carefully considered and reconsideration of the application as amended is respectfully requested.

Applicants respectfully request that the requirements for a substitute oath/declaration and for replacement drawings be deferred until such time as the application is otherwise considered to be in condition for allowance. With respect to the claim objection to the recitation “EMCR-CoV”, Applicants respectfully traverse the objection for reasons next discussed.

First, Applicants respectfully note that the letters “EMCR” come from the term “Erasmus Medical Center Research”. However, as the discoverers of a new virus, Applicants respectfully submit that they should be able to name their virus as they like without regard to whether it consists only of letters, numbers or symbols. See MPEP 2173.01 (“A fundamental principle contained in 35 U.S.C. 112, second paragraph is that applicants are their own lexicographers. They can define in the claims what they regard as their invention essentially in whatever terms they choose so long as any special meaning assigned to a term is clearly set forth in the specification.”). In the present case, the name that Applicants have assigned to their virus is “EMCR-CoV”, and not a longer term containing these letters. Applicants respectfully submit that, as their own lexicographers, Applicants are entitled to do this and that an amendment of the claims to insert a different name should not be required.

Claim 47 has been amended to incorporate the recitations formerly in claim 48 (now canceled) and to delete the recitation (“A method for analyzing a sample”) which the Examiner considered not to be described in the specification as filed. This amendment to the claims is respectfully believed to remove the basis for the rejection under the written description requirement of 35 USC 112, first paragraph, and for alleged new matter.

Claims 51 and 52 stand rejected under 35 USC 112, first paragraph, because the specification allegedly does not reasonably provide enablement for the primers and probes defined by these claims. Applicants respectfully traverse this rejection.

The Examiner has acknowledged that the specification is enabling for the use of primers and probes that are specific to EMCR-CoV. See paragraph 7 of the official action (“the specification, while being enabling for the use of primers and probes that are specific to EMCR-CoV. . .”). Moreover, in not applying the enablement rejection to claims 47 and 48, the Examiner has implicitly also acknowledged that the other claims, including the subject matter defined in claim 47 as amended, are limited to the use of primers and probes that are specific to EMCR-CoV. This being the case, Applicants respectfully submit that claims 51 and 52, which **further limit** claim 47, must also be construed as being limited to primers and probes that are specific to EMCR-CoV. Indeed, the limitation in these claims of “at least 65% complementarity” and “at least 80% complementarity” respectively sets a lower limit on the complementarity of the primer or probe, but does not eliminate the requirement that the primer or probe must be specific to EMCR-CoV. As such, these claims are of more limited breadth than the claim from which they depend and there is respectfully no basis for a

rejection of these claims on the basis of an alleged lack of enablement.

Claims 48-57 stand rejected under 35 USC 112, second paragraph as allegedly being indefinite virtue of the recitations: (a) “more closely phylogenetically corresponds to” and (b) “functional fragment”. Applicants respectfully traverse these rejections.

As discussed in MPEP 2173.02, the essential inquiry pertaining to the 112, second paragraph requirement is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. Definiteness of claim language must be analyzed, not in a vacuum, but in light of:

(A) The content of the particular application disclosure;

(B) The teachings of the prior art; and

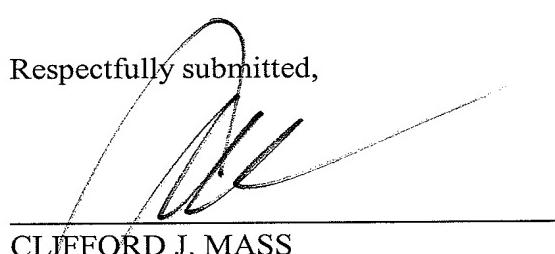
(C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made. See MPEP 2173.02.

In the present case, Applicants respectfully submit that the art is such that those of ordinary skill could be relied upon to determine with a reasonable degree of particularity whether a particular viral isolate is more closely identifiable phylogenetically to one particular genus of virus than another. See, e.g., US Patent 7,531,342 at claim 1 (an isolated virus “identifiable as phylogenetically corresponding to the genus

Metapneumovirus"). Similarly, the teachings of the prior art are such that one of ordinary skill in the art could be relied upon to determine whether a fragment of a particular viral isolate is functional or not. See, e.g., US Patent 4,503,142 and US Patent 6,576,422. Under these circumstances, Applicants respectfully submit that the claims set out and circumscribe the claimed subject matter with sufficient clarity and particularity to satisfy the dictates of 35 USC 112, second paragraph.

In view of the above, Applicants respectfully submit that all rejections of record have been overcome and that the application is now in allowable form. An early notice of allowance is earnestly solicited and is believed to be fully warranted.

Respectfully submitted,



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